IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4197 of 1999

with

SPECIAL CIVIL APPLICATION No 12483 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgement? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GENERAL MANAGER

Versus

KANTIBHAI BABUBHAI VANKAR

Appearance:

1. Special Civil Application No. 4197 of 1999
   MR MUKESH R SHAH for Petitioner No. 1
   Mr.T.R. Mishra for the Respondent.
2. Special Civil Application No. 12483 of 2000
   MR TR MISHRA for the Petitioner.
   MR MUKESH R SHAH for Respondent No. 1

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 19/10/2001

ORAL JUDGEMENT

So far as Special Civil Application No.4197 of 1999 is concerned, Rule. Mr.T.R.Misrha waives service of rule on behalf of the respondent.

With the consent of the parties, both these Special Civil Applications are taken up for final hearing today.

So far as Special Civil Application No.4197 of 1999 is concerned, the respondent-workman had raised industrial dispute, being Reference (ITG) No.2 of 1993, for reinstatement, with all consequential benefits. It is his case that his services were illegally terminated with effect from 1.6.1991 and that the action of the District Manager (Telecom), Mehsana, by which his services were terminated, was contrary to law. The respondent-workman had joined the services of the Department at Patan Sub Division Office in 1976 as a casual labourer. It is his case that he was required to be given the status of permanency relying on the Supreme Court Judgment as he was working from 1976, but for some reason, the said benefit was not given to him by the Department and he was not given any work. Ultimately, the aforesaid oral termination was challenged by him which was subject matter of the aforesaid Industrial Dispute.

The Industrial Tribunal, Ahmedabad, by the impugned order, came to the conclusion that the concerned workman is entitled to reinstatement and it was found that he is in continuous service from 1987, though it was found that there were no details available between 1979 and 1986. It was also found that he was required to be given temporary status from 1989 onwards. Ultimately, the said Reference was allowed and the petitioner-Department was directed to reinstate him on his original post with temporary status from the date on which his juniors were given such status. The names of the juniors were mentioned as Rameshbhai Prajapati and Pankajkumar J. Prajapati. The Department was also directed to pay back wages from the date of reinstatement. The aforesaid Award is challenged by the Department by filing Special Civil Application No.4197 of 1999.

So far as Special Civil Application No. 12483 of 2000 is concerned, the same is filed by the concerned workman for getting appropriate relief against the Department for the purpose of complying with the said

Award, as, according to the petitioner-workman, in spite of the fact that considerable time has passed, the Department has not taken action to comply with the same. Since both the petitions arise out of the same Award, both the petitions are disposed of by this common order.

Mr. Shah learned Advocate appearing for the petitioner-Department, contended that at the relevant time, the concerned workman has left the service on his own and he had joined some other Department for some time. Mr.Shah also further submitted that, in any case, in order to get temporary status, an employee is supposed to work for 365 days in the preceding year by actually serving the Department physically for that preceding year. However, it is not in dispute that before his so-called termination from service, he had served for 352 days in the preceding year. In that view of the matter, it would not be proper to deny the said benefit which, otherwise he would be entitled and which were given to his juniors, whose names have been mentioned in the Award. Considering the reasoning given by the Tribunal, which is based purely on appreciation of evidence, I do not find any substance in the said argument of Mr.Shah in so far as the question about reinstatement of the said workman is concerned. However, Mr.Mishra has fairly conceded that he has no objection if the Award of back wages is suitably modified by this Court. In the facts and circumstances of the case, therefore, I direct that the concerned workman will be entitled to the status of temporary employee as per the Award of the Industrial Tribunal and whatever benefits which are given by the Tribunal regarding reinstatement is upheld in this order. The concerned workman will be entitled to his regular wages from the date of the order of the Industrial Tribunal and he will also be entitled to the temporary status from the date of the order of the Industrial Tribunal. Whatever amount is required to be paid on the basis of the same, will be paid to the concerned workman within a period of one month from today. So far as reinstatement is concerned, the Department is directed to reinstate the petitioner forthwith and, in any case, within a period of two weeks from today.

It is clarified that the Department, while giving the amount of back wages, as stated above, may give 50% by account payee cheque and so far as the other 50% is concerned, the said amount may be invested in a fixed deposit for a period of two years in the name of the concerned workman. The workman will be entitled to withdraw interest periodically and when the F.D. matures, at that stage, he will be entitled to withdraw

the amount which is invested in the F.D.

Both these petitions are disposed of in the aforesaid terms and rule in both the petitions is partly made absolutely accordingly with no order as to costs.

19th October, 2001 (P.B. Majmudar, J.)

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(apj)